

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **201304003**  
Release Date: 1/25/2013

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:  
, ID No.  
Telephone Number:

Index Number: 1035.00-00

Refer Reply To:  
CC:FIP:B04  
PLR-120953-12  
Date:  
October 15, 2012

### Legend:

Old Trust =

New Trust =

Old Policy =

New Policy =

Old Issuer =

New Issuer =

A =

B =

Date a =

Date b =

Date c =

Date d =

Date e =

Date f =

X =

Y =

Dear :

This is in response to the letter submitted by your authorized representative, requesting a ruling that the exchange of a survivorship or "second to die" life insurance contract with one surviving insured for a life insurance contract naming the surviving insured as the single insured will qualify as an exchange subject to section 1035 of the Internal Revenue Code.

### FACTS

On date a, Old Issuer, a life insurance company under section 816(a) of the Code, issued Old Policy to A and B, husband and wife. On Date b, A and B established Old Trust, an irrevocable trust, and on Date c transferred Old Policy to Old Trust. Old Policy was a life insurance contract on the lives of A and B and it provided for the payment of a death benefit equal to X upon the death of the survivor of A and B.

A died on date d, leaving B as the sole insured under Old Policy. On date e Old Policy was transferred to New Trust, an irrevocable trust settled by B, with the consent of all the beneficiaries of Old Trust, in accordance with the requirements of state law.

On Date f the trustee of New Trust exchanged Old Policy for a new life insurance contract, covering only the life of B, and with a death benefit equal to Y (the “New Policy”). The exchange was effectuated by New Trust assigning its interest in Old Policy to the issuer of New Policy (the “New Issuer”).<sup>1</sup> New Issuer issued New Policy to New Trust and then surrendered Old Policy to Old Issuer. New Trust represents that New Issuer is a life insurance company under section 816(a) of the Code.

New Trust was the owner and sole beneficiary of Old Policy and is the owner and sole beneficiary of New Policy. New Trust represents that both Old Policy and New Policy qualify as life insurance contracts under section 7702(a). New Trust further represents that Old Policy was not ordinarily payable in full during the lives of the insureds, and that New Policy is not ordinarily payable in full during the life of the insured.

This request is on behalf of New Trust.

### REQUESTED RULING

You request a ruling that New Trust does not have to recognize any gain or loss from the assignment of Old Policy in exchange for New Policy.

### LAW AND ANALYSIS

Section 1035(a)(1) of the Code provides that no gain or loss will be recognized on the exchange of a contract of life insurance for another contract of life insurance.

In order for a contract to be considered a life insurance contract for purposes of the Code, it must satisfy the requirements of section 7702(a) of the Code.

Additionally, to qualify as a “contract of life insurance” for purposes of section 1035 the contract must also satisfy the definition of that term in section 1035(b)(3). See

---

<sup>1</sup> The request for a letter ruling was submitted before the tax return for the year of the transaction was filed. See, section 5.01, Rev. Proc. 2011-1, 2011-1 I.R.B. 1, 10.

Rev. Rul. 90-109, 1990-2 C.B. 191. Section 1035(b)(3) defines for purposes of section 1035 the term “contract of life insurance” to be a contract with an insurance company that depends in part on the life expectancy of the insured, but that is not ordinarily payable in full during the life of the insured.

Section 1.1035-1(c) of the Income Tax Regulations provides that section 1035 of the Code does not apply to an exchange of policies if the policies exchanged do not relate to the same insured.

The legislative history of section 1035 of the Code indicates that Congress viewed nonrecognition treatment as appropriate for “individuals who have merely exchanged one insurance policy for another better suited to their needs and who have not actually realized gain.” See H.R.Rep. No. 1337, 83d Cong., 2d Sess. 81 (1954).

New Trust's assignment of Old Policy to New Issuer and receipt of New Policy qualifies as an exchange of one contract of life insurance for another contract of life insurance under section 1035(a)(1). At the time of the exchange, the sole remaining insured on Old Policy was B. The sole insured on New Policy is also B. The exchange does not involve a change of insured, which would disqualify the transaction from nonrecognition treatment under section 1035.

#### RULING

New Trust does not have to recognize any gain or loss from the assignment of Old Policy in exchange for New Policy because the transaction is described by section 1035.

#### CAVEATS

Except as expressly provided herein, no opinion is expressed concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. We express no opinion on whether section 1035 applies to the exchange of a survivorship or “second to die” life insurance contract for a single life insurance contract prior to the death of either of the insureds under the survivorship contract. We also express no opinion on whether Old Policy or New Policy qualifies as a life insurance contract under section 7702(a), or upon the tax consequences to Old Trust, New Trust, or the trust beneficiaries of any transaction other than the exchange of Old Policy for New Policy.

The ruling contained in this letter is based upon information and representations submitted by the Company and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

JOHN E. GLOVER  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Financial Institutions & Products)

cc: